

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In Re:)	Case No. 94-31178
)	Chapter 13
LANITA WALKER,)	
)	
Debtor.)	
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ORDER

This matter comes before the Court on the Debtor's Objection to the Claim of Sharon Reid and Motion to Withhold funds filed on July 5, 1996. Initially, a hearing was scheduled on the matter for August 13, 1996. At the request of the Debtor, the hearing was rescheduled to and subsequently held on August 27, 1996 in Charlotte, North Carolina. Based on that hearing and the Court's records the following appears:

1. In 1991, Sharon Reid ("Reid") was awarded a \$10,000.00 college scholarship. The terms of the award provided that the scholarship was assignable.

2. In August, 1992, Reid and the Debtor entered into an agreement, which provided that Reid would assign the scholarship to the Debtor's son, who was a student at Howard University, in exchange for \$7,000.00.

3. Reid assigned the scholarship to the Debtor's son, and all of the funds were credited to his student account at Howard University during the Fall semester of 1992 and the Spring semester of 1993.

4. The Debtor payed Reid \$2,000.00 on the \$7,000.00 debt on November 17, 1992. On November 5, 1993, the Debtor wrote a check

for \$1,500.00 to Reid, with a note recognizing that the amount was \$500.00 short of the full installment payment. She subsequently stopped payment and refused to pay anymore to Reid.

5. As a result, Reid filed suit to collect the debt in Mecklenburg County District Court on March 23, 1994. The Debtor failed to respond to the suit, and Reid received a default judgment in her favor on June 2, 1994.

6. The Debtor filed for protection under the Bankruptcy Code on September 21, 1994. This case was originally filed as a Chapter 13 case, but was converted to a Chapter 7 case on March 2, 1995 for failure to make payments. Thereafter, on June 8, 1996, the Debtor persuaded the Court to reconvert the case to Chapter 13 for the stated purpose of selling the Debtor's residence. The proceeds of this sale were to be applied to the Plan to pay creditor claims.

7. When the case was originally filed, Reid timely filed a proof of claim on October 12, 1994 in the amount of \$5,530 based on the default judgment she received on June 2, 1994. The Debtor failed to object to the claim for nearly two years between the date the bankruptcy was filed and the date the Order was entered authorizing the disbursement of funds in the case.

8. On June 11, 1996 a hearing was held on the motion of the Debtor's second attorney, Keith Johnson, to withdraw from the case. The Debtor received proper notice of the hearing, but failed to appear. In the interim, the Debtor's house had sold and the net proceeds were in the hands of the Chapter 13 Trustee. At that hearing, the Chapter 13 Trustee represented to the Court that he

was prepared to disburse the funds he had on hand and pay off the plan. The Trustee further represented to the Court that he was aware of two claims, including Reid's claim, which the Debtor had previously talked about objecting to, but upon which the Debtor had taken no action. An Order was then entered on June 24, 1996 authorizing the Chapter 13 Trustee to disburse the funds in his custody to pay off the plan in the Debtor's case, including Reid's claim of \$5,530.00. The Order specifically noted the two claims, but indicated that the Debtor's failure to object to the claims, and the efficient administration of the case mandated that the Trustee disburse these funds to claimants, including these. The Debtor received a copy of the Order, but failed to appeal, and the Order became final. Thereafter, based on this final Order, the Trustee distributed the monies in his possession to claimants, including \$5,530.00 to Reid.

8. On July 5, 1996, the undersigned received a letter from the Debtor objecting to the disbursement of any funds to Reid. This letter was not served on the Trustee nor Reid. As the Debtor was, at that time, acting Pro Se, the Court, being unable to respond to an ex parte communication, set a hearing based on the letter ("the Motion and Objection"). Pursuant to a July 24, 1996 Order, a hearing was held in the matter on August 27, 1996.

9. Based on that hearing and the Court's records, it is clear the Debtor's Motion and Objection should be denied. First, the objection is moot. Under Section 502 of the Bankruptcy Code, a timely filed proof of claim is deemed allowed unless a party in

interest objects to the claim. Further, the Debtor's confirmed Chapter 13 plan provided that all allowed claims would be paid upon the sale of the Debtor's residence. Rule 3007 of the Federal Rules of Bankruptcy Procedure further provides that to object to a claim, a copy of the objection along with a notice of hearing must be served on the claimant and the Trustee at least thirty (30) days prior to the hearing date. In this case, Reid properly filed a proof of claim in the Debtor's bankruptcy case on October 12, 1994. The Debtor has never properly objected to Reid's claim under Rule 3001, and the funds were disbursed to Reid under an allowed claim and pursuant to a final Order. As a result, to the extent that the Debtor's letter received on July 5, 1996 can be considered an objection to Reid's claim, that objection is moot.

Such an objection would also fail due to laches. The Debtor had ample opportunity to contest Reid's claim prior to the actual disbursement of funds by the Trustee pursuant to the June 24, 1996 Order. The Debtor failed to controvert this claim in the state court action, failed to object to Reid's filing of a proof of claim in the Debtor's Chapter 13 case for some two years, and although served with the Order directing the Trustee to distribute funds and pay off the case, failed to timely appeal or seek a stay of this Order. Reid has already received the funds, has deposited them in her personal account and has begun to use them. Therefore, the Debtor is guilty of laches and is barred from now asserting her objection.

THEREFORE, THE FOLLOWING IS ORDERED:

The Debtor's Motion to Hold Funds and Objection to Sharon Reid's claim is DENIED.

This is the ____ day of September, 1996.

United States Bankruptcy Judge